
In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 9.10.2006.

Raj Kumar and others

.... Petitioners.

vs

Krishan Kumar

... Respondent

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.R.K.Girdhar, Advocate, for the petitioners.

Kiran Anand Lall, J.

The suit pending before the trial court is, for possession by way of specific performance of agreement to sell dated 14.9.2001. It was filed on 25.7.2002. The petitioners are the defendants. A perusal of the copies of zimni (interim) orders dated 18.1.2006 to 7.8.2006, read with the impugned order dated 22.8.2006, shows that after the close of plaintiff's evidence on 31.1.2006, the case was adjourned to 15.2.2006 for the evidence of the petitioners. However, they did not produce, or summon, any witness, on 15.2.2006. Due to the demise of defendant no.2 Gopal Dass, the case thereafter remained pending for bringing on record his legal representatives. It was on 11.5.2006 that the application for bringing on record the legal representatives of deceased defendant was disposed of and the case was ordered to be listed on 29.5.2006 for the evidence of petitioners viz. defendants.

No DW was, however, present on 29.5.2006 nor had any been summoned. The court granted another opportunity and adjourned the case to 13.6.2006, for the purpose. But, no evidence was produced even on the next

date nor had any been summoned. On the request of learned counsel for the petitioners, still another opportunity was granted to them by adjourning the case to 20.7.2006, for their evidence. On 20.7.2006 also, they did not produce any witness, but their counsel got the case adjourned to 7.8.2006 by making a statement that “he shall conclude evidence on next date”, and in case of his failure to do so it shall be deemed to have been closed. In spite of that, even on 7.8.2006, only one DW (Madan Mohan) was present. The affidavit tendered by him was taken on record and the case was adjourned to 22.8.2006 for his cross-examination and also for the remaining evidence of the petitioners. On 22.8.2006 again, only Madan Mohan DW turned up, and his cross-examination was duly recorded. But, no other witness was produced on that day. Finding no justification for grant of any further opportunity for their evidence and also in view of the statement of their counsel dated 20.7.2006 (supra), the court closed their evidence.

Learned counsel for the petitioners, however, states that since they had deposited diet money and process fee for the summoning of witnesses on 3.8.2006, it was the duty of the court to secure the presence of the summoned witnesses, by issuing summons. This contention, in my view, lacks merit altogether. In view of the fact that on the previous several dates no step was taken by the petitioners to summon any witness, they had lost their right to get assistance from the court for securing the presence of their witnesses, particularly, when their counsel had made a categorical statement on 20.7.2006 that he would conclude his evidence on the next date and in case of his failure to do so, his evidence shall be deemed to have been closed.

In view of the above, I do not find any legal lacuna, or error in

the exercise of jurisdiction vested in the trial court, in the impugned order.

The petition shall, accordingly, stand dismissed, in limine.

9.10.2006.

vs.

(Kiran Anand Lall)

Judge.